

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ELISHA RIGGLEMAN,

Petitioner,

vs.

**Civil Action No. 2:04 CV 80
(Maxwell)**

**STATE OF WEST VIRGINIA,
DEPARTMENT OF CORRECTIONS,**

Respondent.

ORDER

It will be remembered that, on April 18, 2006, Petitioner Elisha Riggleman, a state inmate at the Huttonsville Correctional Center, filed a *pro se* Amended Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody.

It will further be remembered that the above-styled civil action was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation, pursuant to Standing Order of Reference for Prisoner Litigation Filed Pursuant To 28 U.S.C. § 2254 (Standing Order No. 5) and Rule 83.13 of the Local Rules of Prisoner Litigation Procedure.

On October 19, 2006, United States Magistrate Judge John S. Kaull filed a Report And Recommendation in the above-styled civil action, wherein he recommended that the Respondent's Motion For Summary Judgment be granted and that the Petitioner's Amended Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody and his Motion For Judgment be denied.

Magistrate Judge Kaull's Report and Recommendation expressly advised the parties, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any

written objections to said Report And Recommendation within ten days after being served with a copy of the same.

The record herein reflects that on October 27, 2006, the Petitioner filed a Motion Of Objection to Magistrate report and Recomendations (*sic*) (See Docket No. 52).

Upon examination of Magistrate Judge Kaull's Report And Recommendation, it appears to the Court that the issues raised by the Petitioner in his Amended Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody were thoroughly considered by Magistrate Judge Kaull in his Report And Recommendation. Furthermore, upon consideration of the Petitioner's objections to said Report And Recommendation, it appears to the Court that the Petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in said Report And Recommendation. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Kaull's Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled civil action. Therefore, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge John S. Kaull on October 19, 2006 (Docket No. 51), be, and the same hereby is, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Respondent's Motion For Summary Judgement (Docket No. 43) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Petitioner's Motion for Judgement (Docket No. 47) be, and the same is hereby, **DENIED**. It is further

ORDERED that the Petitioner's Amended Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody (Docket No. 30) be, and the same is hereby, **DENIED** and **DISMISSED, with prejudice.**

It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

ENTER: March 29, 2007

A handwritten signature in black ink, appearing to read "Robert E. Lawrence", is written over a horizontal line.

United States District Judge